IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.4 OF 2007

Parekh Platinum Ltd. & Anr. ..Petitioners.

V/s.

The Union of India & Ors. ..Respondents.

Mr.Sridharan with T.Vishavanathan with Jitendra Motwani i/b. PDS Legal for petitioners.

Mr.R.Ashokan with M.I.Sethna, senior counsel for respondents.

CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 22ND FEBRUARY, 2007.

P.C. :-

Rule, returnable forthwith. By consent of the parties, matter is taken up for final hearing.

2. Heard learned counsel for the petitioners and the respondents. By this petition, the petitioners are seeking to challenge the order dated 8th November, 2006 passed by the CESTAT directing to furnish bank guarantee for 25% of the confirmed duty amount.

3. Earlier the Tribunal had directed the petitioner make a pre-deposit of 12.1/2% amount in cash

and furnish 12.1/2% amount by way of bank guarantee. Aggrieved by the said order, the petitioner had approached this Court and this Court remanded back the matter to the Tribunal to consider the matter afresh. The Tribunal had directed a pre-deposit by furnishing a bank guarantee of 25% of the confirmed duty amount.

4. During the earlier proceedings in the year 1998 i.e. on 27th May, 1998, statement of the employee of the petitioner was recorded indicating that there was an intermediary product of platinum salt. Mr. Sridharan pointed out that now show cause notice has been issued in the year 2004 invoking the extended period of limitation. Mr.Sridharan pointed out that when the respondents were very much aware of the above fact in the year 1998 itself, they could not have initiated action under the purported extended period of limitation in the year 2004. The learned counsel has also pointed out that the CESTAT has not considered the entire issue in a proper perspective.

5. We find that even after the remand, the Tribunal has not considered the issue of extended period of limitation especially when the respondents were aware of the intermediary product in 1998 itself, in a proper perspective. The learned counsel appearing

for the revenue submits that the demand amount is Rs.25 crores and the pre-deposit is only a fraction of that amount.

6. Under the aforesaid facts and circumstances, we find that there is an arguable issue. In view thereof, it is a fit case where the Tribunal has to waive the pre-deposit. Accordingly, we waive the pre-deposit. The Tribunal shall hear the appeal of the petitioner on its own merits.

7. Rule is made absolute in above terms.

8. We are informed that on the same issue an appeal of M/s.Hindustan Platinum Ltd. is already on the board before the Tribunal for final hearing. In view thereof, this appeal be also taken up along with the said appeal for final hearing.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)